

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	MM Docket No. 93-89
)	
AURIO A. MATOS)	File No. BPH-911114MS
)	
LLOYD SANTIAGO-SANTOS and LOURDES)	File No. BPH-911115MP
RODRIGUES-BONET)	
)	
For Construction Permit for a New)	
FM Station on Channel 293A at)	
Culebra, Puerto Rico)	

To: The Review Board

RECEIVED
JAN 28 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

STATEMENT FOR THE RECORD

Aurio A. Matos, by his counsel, respectfully submits this Statement for the Record regarding the matters presented herein relevant to the above-captioned proceeding.

On January 21, 1994, counsel for Aurio Matos ("Matos"), by letter filed with the Secretary's Office, exchanged a document that counsel determined should have been produced pursuant to the continuing obligation of applicants to exchange relevant documents with parties to the proceeding imposed by the Commission's document production rules. The document was a one page letter from the Fish and Wildlife Service (the "FWS Letter") indicating that a Project Leader at a Fish and Wildlife Branch in Puerto Rico had denied Matos' request for a Special Use Permit to locate his tower on Fish and Wildlife Service ("FWS") property, as Matos had proposed in his application.

Counsel did not provide the Review Board or the Presiding Judge with a copy of the FWS Letter, only a transmittal letter indicating that a document was being exchanged among the parties,

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as is the standard practice during document exchange. ¹ Counsel for the Mass Media Bureau has advised undersigned counsel in an informal discussion, of the Bureau's belief that a copy of the FWS Letter should have been served on the Review Board pursuant to Section 1.65 of the Commission's rules. Counsel elected not to provide the Review Board a copy of the letter because the letter is not a final determination of the FWS, nor is it necessarily an absolute prohibition against Matos locating his antenna on the already existing tower on FWS property. ² Counsel did not, and does not now believe that the letter represents a "substantial and significant change" in the information provided by Matos in Matos' application. Had the letter unquestionably and without availability of any further remedy, rendered Matos' site unavailable, Matos' would have been timely amended his application to report the loss of site. In this case, it is probable that Matos would have, upon appeal to the FWS, been able to use the site specified in his application most especially in light of the fact that there is a private tower already constructed on the site. However, to assuage any potential problems, Matos is providing a

¹ Prior to the January 21, 1994, Bureau counsel and counsel for the sole competing applicant in this proceeding were already aware of the existence of the letter.

² As argued in a Petition to Enlarge Issues to include site availability issues against Matos and in the opposition thereto, there is already an existing tower on the FWS property Matos specified. The tower is, by FWS's admission in a valid Special Use Permit issued to the tower owner, the private property of the tower owner, who is the licensee of FM Station WSAN, Vieques, Puerto Rico. In the interest of providing new service to Culebra more rapidly, Matos has taken steps to amend his pending application to specify a new site, rather than argue this point.

copy of the FWS Letter to the Review Board herewith.

It has been represented to undersigned counsel by Matos that he has obtained, in the interest of expediting settlement of the hearing and the delivery of new service to Culebra and its surrounding communities, reasonable assurance of a new site. Matos has commissioned an engineering study for the new site and that study has been prepared and delivered to counsel. Counsel has been working on a Petition for Leave to Amend and the necessary "good cause" showing while working with the parties to pursue a settlement.³ It was never the intent of Matos, or his counsel to be anything less than candid in the production of this document. Counsel intended to make the document a part of the Petition that will be filed early next week so that a "good cause" determination could be made by the Review Board.

It should also be noted that the other parties to the proceeding have in no way been prejudiced by the fact the FWS Letter was not served on the Review Board, since the parties have been aware of the existence of the FWS Letter prior to, and were provided with a copy of, the FWS Letter on January 21, 1994.

³ In addition to the weather slowing down progress on the settlement and Petition for Leave to Amend, counsel has been somewhat distracted, as stated in the January 21, 1994 letter transmitting the document to the parties, by a serious medical problem with a close family member that required his absence from the office from January 7, 1994 through January 18, 1994.

WHEREFORE, it is respectfully requested that this Statement for the Record be accepted by the Review Board and made a part of the record of this proceeding.

BROWN NIETERT & KAUFMAN
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036
(202) 887-0600

January 28, 1994

Respectfully submitted,
AURIO A. MATOS



Scott C. Cinnamon
His Counsel



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Caribbean Islands National Wildlife Refuge
P.O. Box 510, Carr. 901, Km. 5.1
Boqueron, Puerto Rico 00622

December 13, 1993

Aureo A. Matos
Apartado 7
Moca, PR 00676

Dear Mr. Matos:

We received your letter of December 9, 1993 informing us of the FCC's decision to grant you a construction permit for establishment of a new radio station in Culebra, PR. In this same letter you requested a Special Use Permit from the U.S. Fish and Wildlife Service for use of the existing tower on our property.

As you are aware this tower is located on a National Wildlife Refuge which has a mandate for protection of the natural resources on these lands. The present tower is considered an incompatible use because of its vicinity to an endangered plant species and the negative effect that the tower lights have on the orientation of endangered sea turtles nesting on a beach below the tower. Since this tower is inconsistent with the refuge goals we are working towards its elimination. I am sorry to inform you that we have made a definitive decision not to grant you a Special Use Permit for use of this tower, not even on a temporary basis.

Sincerely,

Shaw Davis
Project Leader

cc: T. Tallevast, Culebra NWR
G. Schonman, FCC

CERTIFICATE OF SERVICE

I, Phyllis Lee, do certify that on this 28th day of January, 1994, a copy of the foregoing was sent via first class mail, postage prepaid or delivered, as indicated, to the parties set forth below:

Honorable Joseph A. Marino, Chairman
The Review Board
Federal Communications Commission
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Washington, D.C. 20554 *

Honorable Norman B. Blumenthal
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* - via hand delivery


Phyllis Lee